IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Bail Appl..No. 6101 of 2007()

LP.153/2006 of J.M.F.C.,CHAVAKKAD

[CRIME NO.193/2003 OF GURUVAYOOR POLICE STATION

.....

: PETITIONER/ACCUSED NO.4

BASHEER, S/O.ABDULLAKUTTY,
THAZHATHETHIL VEEDU, CHIRAMANENGAD,
KUNNAMKULAM P.O., THRISSUR DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: COMPLAINANT

STATE OF KERALA THROUGH THE
SUB INSPECTOR OF POLICE,
GURUVAYOOR POLICE STATION, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.6101 of 2007

Dated this the 9th day of October 2007

O R D E R

Application for anticipatory bail. The petitioner faces indictment in a prosecution under Section 379 I.P.C. The allegation relates to theft of a vehicle, it is submitted. The petitioner was enlarged on bail at the investigation stage, it is submitted. After investigation, final report was filed. Cognizance was taken. The case was registered; but the petitioner did not appear. Coercive processes have been issued. Warrant of arrest has been chasing the petitioner. The case has been transferred to the list of long pending cases.

2. According to the petitioner, he is absolutely innocent. He has not received any notice from the court. The petitioner is willing to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

3. I have considered all the relevant inputs. In Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

5. In the result, this bail application is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007